IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12104 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HASMUKH @ BATLO CHANDUBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR SAMIR DAVE, AGP for Respondent No. 1

RULE NOT RECD BACK for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/02/2001

ORAL JUDGEMENT

#. Rule of respondent No.3 is not received back. The respondent No.3 is neither necessary nor proper party to this petition. None of his action or order is challenged nor he is concerned with the detention of the petitioner.

He is only a jail authority where the petitioner would have been detained and as what it is stated, for communication of writ of the order passed in this case, this authority has been impleaded as a party. I fail to see any justification in this approach of the litigants. Where the court allows the petition, writ of the order has to be sent to the concerned jail where the detenu is detained and for this, the jail authority is not necessary or proper party to the petition. It is unnecessary burden of expenses to be borne by litigant by impleadment of this party as respondent. In view of this fact, it is not necessary to wait for receipt of service of notice of Rule of respondent No.3.

#. Challenge has been made by petitioner - Hasmukh alias Batlo Chandubhai Patel, detenu, at present detained in Bhavnagar Prison, Bhavnagar, by this petition under Article 226 of the constitution to the order dated 24.9.2000 of the Police Commissioner, Vadodara City, Vadodara, under which he was ordered to be detained as a `bootlegger'.

#. Manifold contentions have bene raised by learned counsel for the petitioner challenging the propriety, correctness and legality of this order but as this petition deserves acceptance only on one ground, no need to refer to all those contentions, consider and record findings thereon.

#. This special civil application was admitted on 27.11.2000. Rule was made returnable on 18.12.2000. The respondents were directed to file detailed reply affidavit in respect to the grounds mentioned in the petition by returnable date. More than two months and 12 days have already passed but none of the respondents have cared to file reply to the special civil application. The factual averments made in the special civil application stand uncontroverted and it has to be taken to be correct.

#. It is contended by learned counsel for the petitioner that copies of statements of witnesses recorded u/s.161 of CR.P.C. in the criminal complaints concerned were not given to the petitioner. This has been averred in paragraph-8 of the special civil application. In paragraph-11 of the special civil application, it is averred that in the representation made to the Home Minister on 13.11.2000 also, this complaint has been made but the detaining authority has not supplied copies of those statements to the detenu and as a result of which, he has been deprived of his valuable right of making

effective representation. As stated above, though this petition was admitted on 27.11.2000 none of the respondents has cared to file reply to the special civil application. These factual averments made by petitioner in the petition stand uncontroverted and the same have to be taken to be correct. It is a clear case where despite the request made by petitioner in the representation, copies of the documents of the statements of the witnesses recorded u/s.161 of CR.P.C. in the criminal complaints which have been made use of in passing the order of detention of the petitioner have not been supplied and the petitioner is deprived of his valuable right of making effective representation as conferred under Article 22(5) of the Constitution. At this stage also, the detenu has been favoured by respondents which is clearly borne out from the fact that none of the respondents have cared to file reply to the special civil application so that there may not be any hurdle in the way of the petitioner to get himself free from this detention.

#. In the facts of this case, it appears that either the detaining authority is not considering all these aspects and whatever the note put before it, he approved the same and which culminates in the order of detention of a citizen. Second possibility seems to be that the detaining authority deliberately left out lacunas in the order passed so that it may not be difficult for the detenu to get himself released of this detention from the court. This second possibility seems to be more possible as what my experience of one month of dealing in these matters goes. In almost all the detention cases, there are lacunas after lacunas left out and the court is left with no option but to release the detenu. From the matters which have come before this court, it further transpires that these detention orders were passed by the detaining authority only for statistical data so that they may befool the people. The authorities want to take credit that that much number of persons were ordered to be detained to maintain the law and order position or to curb antisocial activities. But in almost all the cases, serious lacunas are being left and as a result thereof, release order of the detenu is made by the court. It is a different matter that the detaining authority may satisfy people by saying that the court released the detenu. It is unfortunate that live telecast of the court proceedings is not there and the court has not its own media to let the people know how these authorities are befooling them and how they play fraud with this Act, and contrary to it, the authorities have their own media and further opportunity to directly come into contact

with people to convey their message to them. Sometime, I feel that some officer from the Law Department should remain present in the court to watch the proceedings of the court and report of each and every case to the Chief Secretary of the State of Gujarat so that at least that officer may know how these officers are befooling people and playing fraud with the Act. But it is difficult to keep busy one officer in the court. If the detention orders are passed only for the purpose of having a handsome statistical data and though in all those matters deliberately lacunae are being left and as a result of which the detenu are to be set at liberty, this is certainly an act to befool the people as well as fraud on the Act itself. On being asked by the Court, the Government advocate as well as other members of the Bar more particularly who are appearing in PASA matters informed that in more than 90% cases, the detention orders are being quashed and set aside by the court. This if what it is conveyed to the court is correct, then what the court feels and observed aforesaid to a substantial extent is correct.

#. In the result, this petition succeeds and the same is allowed and the order of detention of the petitioner dated 24.9.2000 is quashed and set aside. The petitioner - Hasmukh alias Batlo Chandubhai Patel, the detenu, at present at Bhavnagar Prison, Bhavnagar, be set at liberty forthwith, if he is not required in any other case. Rule is made absolute. No order as to costs.

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(sunil)